

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

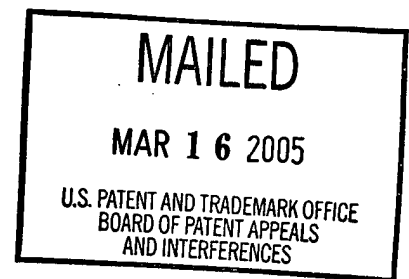
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte JAMES M. KAIN

Appeal No. 2005-0496
Application No. 10/032,633

ON BRIEF



Before MCQUADE, NASE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-17, which are all of the claims pending in this application.

BACKGROUND

The appellant's invention relates to a juvenile seat having a cup holder movable between a closed position and an opened position (specification, page 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The following is the only rejection before us on appeal:

Claims 1-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Gignac.¹

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer (mailed July 6, 2004) for the examiner's complete reasoning in support of the rejection and to the brief (filed November 12, 2003) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied Gignac patent, and to the respective positions articulated by the appellant and the examiner. For the reason which follows, we cannot sustain the examiner's rejection.

Appellant's invention is directed to juvenile seats and booster seats for automobiles, which, as pointed out on page 1 of appellant's specification, are generally known and are in relatively widespread use. Such seats are specially adapted for children who are too small and/or light to be protected by standard automotive seats and seat belts.

Each of appellant's claims 1-17 recites either a "juvenile seat" or a "juvenile booster seat." The examiner has rejected these claims as being anticipated by Gignac,

¹ U.S. Pat. No. 5,248,183, issued September 28, 1993 to Gignac et al.

which is directed to container holders for vehicles and, more particularly, to an armrest or console assembly comprising such container holders. Simply stated, the examiner's position that Gignac's armrest or console is a "juvenile seat" or "juvenile booster seat" is unreasonable and untenable. A person of skill in the field of juvenile seats would understand that a juvenile seat or booster seat is a seat specially adapted for children who are too small and/or light to be protected by standard automotive seats and seat belts and would not contemplate placing a child on an armrest or console of the type disclosed by Gignac for such purpose. It thus follows that such a person would not consider Gignac's armrest or console assembly to be a "juvenile seat" or "juvenile booster seat" as called for in appellant's claims.

In light of the above, claims 1-17 are not anticipated by Gignac and the anticipation rejection cannot be sustained. We thus find it unnecessary to consider the appellant's declaration under 37 CFR § 1.131 filed July 14, 2003.

To summarize, the decision of the examiner to reject claims 1-17 under 35 U.S.C. § 102(b) is reversed.


JOHN P. MCQUADE
Administrative Patent Judge


JEFFREY V. NASE
Administrative Patent Judge


JENNIFER D. BAHR
Administrative Patent Judge

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BARNES & THORNBURG
11 SOUTH MERIDIAN
INDIANAPOLIS, IN 46204